G R S. App ☞ IX-4]

1943-44 Mk File No 101-43

Previous References (Mk) Serial Nos 10, 11

Later References

L-84/mc-107-46-3,4 & 6-7-45

GENERAL AND REVENUE SECRETARIAT

Serial Nos Two

Part B for Jany 1944

SUBJECT

Recovery of profession tax from the Bangalore Chikballapur Rly Co

---

The Mc Commr Bs City

6828 & 31/12/44

Directs that it would not be

24/3 the order to levy a tax

Letter No 32, dated 14-7-1943, from the Chairman, B C & Mg, Co, re Assessment No C 211 dated 3 6/42 demanding a sum of Rs 112-8-0 per year from 1941-42 and 1942-43 being alleged Profession Tax

1) The Commissioner of Bangalore City Municipality has assessed the B C & M Co, to Profession Tax of Rs 112 8 0 per year for 1941-42 and 1942-43, as being payable under clause I of Schedule V to the Municipal Act

2) The Company thereupon preferred an appeal against the said assessment on the ground that the Co is not carrying on any business as per Schedule V of the Municipal Act except paying interest to the shareholders and that the same has been dismissed

3) The Chairman, B C & Mg, therefore requests to move Govt to cancel the tax in question and to sanction Govt to the payment thereof in case it is not possible for cancellation, owing to the working Expenses of the Mg as per Cl: 9 of the Agreement between the Govt & the Co.

4) This may perhaps be referred to the Dy Secretary (A & S) for f/o remarks in the first instance

5) The further communication of 21 7 43 since received from the Chairman, B C & Mg, is placed below

6) The Chairman states that so far as he is aware there is no notification of this Govt in force making the B C & Mg liable to pay the tax in question, as regards

732/p 843 797

Continuation Sheet | File No / Current No | Page

V

under Sec" 117 (1) of the Mysore Railway Act

Subd) 28/7 7) May be referred to the Law Sec for favour of remarks

Dy Secy) 28/7

8) Law Sec to the Compt)

28/7/43

28-7-43

9) Kind reference is invited to paras 4 & 5 supra. It has been marked to the Law Secy in his capacity as Secretary for the Local Self Govt Department

10) If approved the file will be transferred to L&L S Br for necessary further action

Asst Secy 28/7/43

11) As last remarks

3

28/7/43

(2) Put up the copy of the Rules & Bye-laws relating to the levy of Profession Tax under the Mysore Municipalities Act

28/7/43

13) A copy is to be put up as directed.

14) From the Rules put up, it is seen that the word "person" is not defined so as to include a firm, Company or association. The demand notice shows that the Clark Rabbit Light Railway Co has been assessed as a I class "person" carrying on business as a Company. The appeal petition

SECRETARY TO GOVERNMENT 946 27 7 TL

18/205

SECY LAW DEPT 945 28/7/43 GOVT OF MYSORE

28/7/43

Chairman of the Company for waiving the payment as stated to have been demanded for 41-42 & 42-43 and a fresh bill for Rs 24 has been sent to the Company's office. The Chairman has pointed out that under Sec 117 of the Bangalore Act, the Company is not liable to pay the taxes for the

15) The remarks of the Chief Auditor may please be called for in the first instance with the contents put forward by the Chairman of the B C L A, together with the records bearing on the subject

Law dept 9/8/43

16) As may be done

ccs
9-8-43
by hand

GOVT OF MYSORE 1374 9/8/43 LOY LAW DEPT

17) Forwarded with Compliments to the Municipal Commissioner Bangalore City for favour of remarks

No 57/43-44 dy 10/8/43

By order
Superintendent
for Secy to Govt
9/8 Law Deptt

18) Retransmitted with compliments

The company was assessed to a professional tax of Rs 112-8-0 for 41-42, taking

the income of the company at Rs 61,459 as per their balance sheet of the year ending to a number sum for 42-43 and was brought under clause II of Schedule V of the Bombay Income Tax Rules. The appeal preferred against this order was dismissed as the company had actually earned this amt during the years. A further appeal has been made to Government on the following grounds —

1 - That under the agreement dated 4-2-1919 between the Government and the Company, the Govt had to bear all the working expenses - No tax has been levied under S 4(b) of Income Act, Schedule V and the legislature never intended the tax levied will have to be paid by the company

2 That Govt have guaranteed to pay interest at 4% to the share holders and hence the company has to be assessed under Class II the interest paid by Govt amounts to Rs 23,11,246 But the net income as per balance sheet of the Company for 41-42 is Rs 61,459/- As the income comes to over Rs 50,000 per mensem the Company was rightly assessed under Schedule C

3 That Govt have no refund the payment of taxes under S 119 of the Indian Railway Act The levy of the taxes is made under Income Act and has to be paid

Hence I am of opinion that the company may be required to pay the taxes for 41-42 under Rule 3, if necessary after obtaining Government sanction. P Sanjivamurthi

10/11/43 Cm

11/43 from

Continuation Sheet 797 | File No / Current No | Recovery of profession tax from the Bangalore Chikkaballapur Light Ry Co Ltd | of | Page

19) The Municipal Council Bangalore City Municipality has explained the circumstances in which the Bangalore-Chikkaballapur Light Railway Co Ltd has been assessed to profession tax (Para 18 supra) and in view of what has been stated therein, the Ry Co has to pay the profession tax to the Municipal Council

20) Submitted with refce to paras 16 & 16 above

13/11/43

15/11

21) The opinion of the Advocate General may perhaps be obtained on the enclosed papers forwarded by the Chairman of the B C L Railway Co.

Secy Fin Dept
19-11-43

SECY LAW DEPT 485 1 - 1 013 GOVT OF INDIA CORE

Recovery of Profession tax from the Bangalore-Chittaballapur Rly Co Ltd

Continuation Sheet. File No 4085 /43 Page
Current No

Flag Z

para 18 Supra

Comm Dept's note dated 8/11/43, that under the Govt issue a notification declaring the Rly Co is liable to profession tax, under s 117 (1) of the Railways Act (IX of 1890) the Co is not liable to pay profession tax ~~C L~~ Govt 25/11/43 A G

The opinion enclosed in the 2nd Comm, D Cy, on the note dated 10-11-43 that the tax is payable on account of the M C M Act (VII of 1933) (s 64 (6) (xi)) ignores the plain provision of s 117 (1) of the Rly Act subject to which all local taxation laws must be read C&G 26/11/43

Law 27/11/43

24) The opinion of the Advocate General is submitted, for perusal and orders

Law 27/11/43 25) The opinion of the Law Secretary may please be called in the matter

Law Secy 1/12/43

26) Law 30/11/43 L

27) The opinion of the Asst Secy - Law Section) Law 30/11/43

Part of the Railway Act- answer 3 30/11/43

28) The views of the A G as regards the interpretation of s 117 (1) of the Railway Act, is correct By virtue of s 117 (1), I think, the Tax cannot be levied by the Municipality, unless a notification is issued to that effect under s 117 (1).

Law Secy 3 30/11/43

Asst Secy 3 1/12/43

29) Law 1/12/43

A copy of the Act is herewith put up for kind reference when done with Kindly 30/11 1/12/43

Law. 7-7-43 30.11.43.

SEPY L & WDEPT 1 SEP 46 OFFICE OF THE RESIDENT MYSORE

WD 1140—GPB—50 000—5-11-42

Recovery of profession tax from the Bangalore-Chikkaballapur Rly Co

797

Continuation Sheet | File No / Current No | of | Page

30) The Law Section have agreed with the Views of the Advocate General

31) For orders if this may be sent to the Rl Comr for further remarks in the light of the legal opinion at para 23 Supra

Submitted with refce to para 25 Supra

Sen 3/12/43 JW

In view of the legal opinion on the subject, the Rl Cmr. Mysore will be informed that unless there is a rule expressly authorising the Mysore Govt to levy the profession tax under the provisions of sec 117(4) of the Railway Act, it will not be in order for the Govt to levy the said tax

Lawsey 4/12/43

May be regularised accordingly

Minister 6/12/43

Sen 6/12/43

JAG 7/12/43

Sen 7-12-43

Draft letter please 7/12/43

SEOY LAW DEPT 6 DEC 1943 GOVT OF MYSORE

OFFICE OF THE MINISTER FOR L S G & P H 6 Dec 1943 3629

Recovery of profession tax from the B-C-L Ry Co

797/L

Continuation Sheet | MH File No / Current No | of 43 | Page

Submitted with a draft letter to the Md-Comm B-C-M

11/12/43

Reference para 7 Supra

the MRS

Asst Secy (L&S) G-WC

for favour of issuing necessary orders in the matter

17/12

17/12

Asst Secy (L&S) G-WC

for favour of issuing necessary orders in the matter

17/12

17/12/43

Md Comm B C M

No MH/65-28-L 31/12/43

informing that it would not be in order for the municipal council to levy the P Tax on B C L Ry

Bangalore-Chickballapur Light Railway Co., Ltd.

3RD ROAD CHAMARAJAPET

Rl 101-43-10

No 32
En 2

Bangalore City 14th July 1943.

From

L S Raju, Esq , L A (Hons) B L , M L C ,
Chairman, B C L Railway Co., Ltd.,
B a n g a l o r e.

To

The S e c r e t a r y
to the Government of Mysore for Railways,
B a n g a l o r e.

17/9.

Sir,

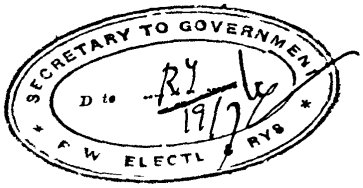
Re. Assessment No C 211 dated 3-6-1942 demanding a sum of Rs 112-8-0 per year from 1941-42 and 1942-43 being alleged Profession Tax

---

The Commissioner of Bangalore City Municipality has assessed the Company by Profession Tax of Rs 112-8-0 per year for 1941-42 and 1942-43 and a demand bill for Rs 225-0-0 has been sent to this office

An appeal No 887 dated 12-6-1942 had been addressed to the above Commissioner stating that the Company is not carrying on any business (excep paying interest to the Shareholders) as per clause V of the Municipal Act (A copy of which is herein enclosed for your perusal) The said appeal was dismissed and a final bill for Rs 225/- has been received in this office I therefore request that you will kindly move the Government to cancel the above Tax, in case if it is not possible please get the sanction of the Government to pay the same and debit the above expediture to the Working Expenses of the Railways as per clause 9 of the Agreement

The bill No 79 dated 10-10-1942 is herein enclosed for necessary action in the matter



I have the honor to be,
Sir,
Your most obedient servant,

Chairman, B C L Ry.

M 17 A] (*Rule 59*) 79

BILL FOR ARTS, PROFESSIONS, TRADES AND OTHER CALLINGS

Bilore city Municipality

Dated 10/10/42

Assessment number C-203/42-43

To The Bangalore Cantonment Vallapur

Address Light Railway co Ltd IIIrd Chamaraj pet

Please take notice that as your monthly income is believed to be Rs 5/21 you have been assessed under class I

The sum of Rs 225/- as detailed below is therefore payable within 15 days from the date of presentation of this bill If it is not paid within that period and you do not show sufficient cause why the same should not be paid, a notice of demand will issue for the distraint of your property and for each such notice a fee of annas 0-8-0 will be leviable If the tax and fee still remain unpaid your property will be liable to be distrained under Sections 70, 91 and 96 of the Mysore Minor, Town and City Municipalities Acts as the case may be In case you are dissatisfied with the above assessment you can prefer an appeal to the Municipal Council within 15 days

Date of presentation of bill M. Sadasivaiah

Revenue Officer & Assessor
Bangalore City Municipality

President (Facsimile)

Class	Arrears 41-42	Current 42-43	Total
I class	100-0-0	100-0-0	225-0-0
Education cess	12-8-0	12-8-0	

WD 6711—GPB—400 bks of 100 pp each—18-8-41

STAMPED ANNAS TWELVE

Copy of the letter No 887 dated 12-6-1942 addressed to the Municipal Commissioner, Bangalore City, from the Secretary, BCC L Railway Co , Ltd

---

Reference:- Your assessment No C 211 dated 7-6-1942 demanding a sum of Rs 100/- from the above Company being alleged Profession Tax due for the 1941-1942 and asking me to arrange for its early payment

---

In connection with the above, I beg to state as follows

(1) The Profession Tax is payable under Schedule V to the Municipal Act by any person carrying on business as a Company By an Agreement between the Company and the Government of His Highness The Maharaja of Mysore dated 4th August 1919, the business of the Company was taken over by the Government of His Highness the Maharaja of Mysore for a period of 30 years as from 1 st August, 1918 and all the working expenses are now met by the Government in accordance with Clause 9 of the Agreement, which is as follows -

X X X

(2) The Government took over the Management and business because they had the major interests in the Railway and contributed a major part of funds for the construction of the said Railway and, in consideration of the Company transferring the business and control, the Government of Mysore have guaranteed to pay interest at 4 per cent, per annum to the Company which, less income-tax, comes to Rs 23,000/- and odd per year Even if this amount is treated as income, it is an income not for carrying on any business by the Company and therefore cannot come within the purview of Schedule V to the Municipal Act.

(3) I am therefore advised to submit that the above assessment is not legal and is liable to be cancelled, which I pray In any event, the assessment can only come, if at all, under Class II and not under Class I of Schedule V to the Municipal Act

(4) In the event of your not cancelling the assessment on the above submissions, kindly treat this as an appeal to the Municipal Council

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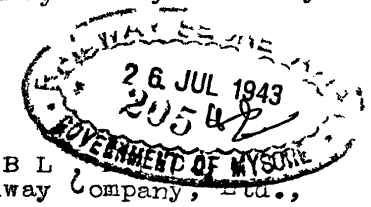
for Secretary, B C L Ry Co ,Ltd

Bangalore-Chickballapur Light Railway Co., Ltd.

3RD ROAD CHAMARAJAPET

No 47

Bangalore City 21st July 1943.



From

L S Raju, Esq , M A , (Hons) B L
Chairman, B C L Railway Company, Ltd.,
B a n g a l o r e

17/7

To

The S e c r e t a r y

to the Government of Mysore for Railways,

B a n g a l o r e

Sir,

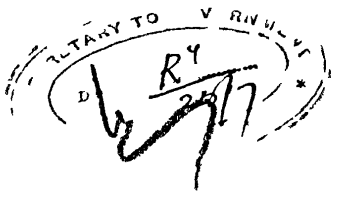
Re Assessment of Profession Tax against the Company

In continuation of my letter No 32 dated 14-7-1943, I desire to bring to your notice the provisions of Sec. 117 (1) of the Mysore Railway Act which enacts as follows -

" Sec 117 Notwithstanding anything to the contrary in any enactment, or in any agreement or award based on any enactment, the following rules shall regualte the levy of Taxes in respect of Railways and from Railway administrations in aid of the funds of Local Authorities, namely -

(1) A Railway administration shall not be liable to pay any tax in aid of the funds of any Local Authority unless the Government of His Highness The Maharaja has, by notification in the Official Gazette, declared the Railway administration to be liable to pay the Tax

So far as I am aware, there is no notification of the Government of Mysore in force, making the B C L Railway Co liable to pay the Tax in question



I have the honor to be,
Sir,
Your most obedient servant,

Chairman, B C L Ry.

Retransmitted with compliments

The Bangalore-Chickballapur Light Railway Company, Ltd , was assessed to profession tax of Rs 112-8-0 (100/- plus 12-8-0 Education cess for 41-42) for 41-42 taking the income of the Company at Rs 61,459/- as per their balance sheet of that year and to a similar sum during 42-43 and was brought under Class 1 of Schedule V of the Profession Tax Rules The Company appealed against this levy but the appeal was dismissed as the Company had actually earned this amount during the years Now the Company has appealed to Government protesting against this levy, on the following grounds

1 The management and control of the Company has been taken over by Government since 1915 and on an understanding that the Government shall pay interest at 4% to the Share-holders, which comes to about Rs 20,112-4-0 per year, after deducting income tax This return to the share-holders cannot be treated as income of the Company as a result of carrying on any business and so, does not come under the purview of Schedule V of the Municipal Act

2 That the Company cannot be classed under Class 1 of Schedule V as its monthly income does not exceed Rs 2090/- (the interest paid by Government will be Rs 1,926-0-4 per month) and so has to be classed under classII

3 That Government have not declared the Company liable to pay this tax under section 117(1) of the Mysore Railways Act

4 And that, if it is decided that the tax has to be paid, then it may be paid by Government considering it as an item of expenditure

As regards item No. 1. money paid by the share holders is ~~earning~~ earned a definite sum by way of interest at 4% and this is an 'income' under the Profession Tax Rules

The other contention of the party that this interest that is being paid every month is less than Rs 2,000/- and so, the Company has to be assessed under Class II and not Class I is also not tenable, inasmuch as the amount of profits actually ~~caused~~ earned by the Company as per its balance sheet is Rs 61,459/- and assessment is

Appendix F G —1]

SUBJECT

Section ml
File No 101-43
Serial No 11

Diary No of letter replied to

No 6528

To

General and Revenue Secretariat

( )

the *194*

The Md Comr B'lore city Municipality (thro the president)

Date of issue 31/12

Sir,

Signed by

I am directed to invite reference to your No nil dated 10-11-43 re the claims of the Bangalore City Municipal Council for the recovery of profession tax from the Bangalore Chikkaballapur Ry Coy and to state that, unless there is a notification expressly authorising the Bangalore city, mnl cl. to levy the profession tax under the provisions of Section 117(1) of the Railways Act (IV of 19

List of enclosures

Copied by

Examined by

WD 04161—GPB—60 000—24 10 41

it would not be in order for the municipal council to levy the said tax on the said Railway Coy

I have etc

for Secy to Govt -
Law Dept -

Memo L 65 29-30 dt 31/12

Copy of the above is forwarded W/C to the Chairman, Bangalore - Chikkaballapur Light Ry Co for information with refce to his letter no 32 dt 14-7-43

(2) the General Manager Mysore Rys

Copy to the Rly Supdt

B.O.
for Secy to Govt -
Law Dept -